**11-13-101. Title.**

This chapter is known as the "Interlocal Cooperation Act."

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-102. Purpose of chapter.**

The purpose of this chapter is:

(1) to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

(2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-103. Definitions.**

As used in this chapter:

(1) (a) "Additional project capacity" means electric generating capacity provided by a generating unit that first produces electricity on or after May 6, 2002, and that is constructed or installed at or adjacent to the site of a project that first produced electricity before May 6, 2002, regardless of whether:

(i) the owners of the new generating unit are the same as or different from the owner of the project; and

(ii) the purchasers of electricity from the new generating unit are the same as or different from the purchasers of electricity from the project.

(b) "Additional project capacity" does not mean or include replacement project capacity.

(2) "Board" means the Permanent Community Impact Fund Board created by Section 35A-8-304, and its successors.

(3) "Candidate" means one or more of:

(a) the state;

(b) a county, municipality, school district, local district, special service district, or other political subdivision of the state; and

(c) a prosecution district.

(4) "Commercial project entity" means a project entity, defined in Subsection (12), that:

(a) has no taxing authority; and

(b) is not supported in whole or in part by and does not expend or disburse tax revenues.

(5) "Direct impacts" means an increase in the need for public facilities or services that is attributable to the project or facilities providing additional project capacity, except impacts resulting from the construction or operation of a facility that is:

(a) owned by an owner other than the owner of the project or of the facilities providing additional project capacity; and

(b) used to furnish fuel, construction, or operation materials for use in the project.

(6) "Electric interlocal entity" means an interlocal entity described in Subsection 11-13-203(3).

(7) "Energy services interlocal entity" means an interlocal entity that is described in Subsection 11-13-203(4).

(8) (a) "Estimated electric requirements," when used with respect to a qualified energy services interlocal entity, includes any of the following that meets the requirements of Subsection (8)(b):

(i) generation capacity;

(ii) generation output; or

(iii) an electric energy production facility.

(b) An item listed in Subsection (8)(a) is included in "estimated electric requirements" if it is needed by the qualified energy services interlocal entity to perform the qualified energy services interlocal entity's contractual or legal obligations to any of its members.

(9) "Interlocal entity" means:

(a) a Utah interlocal entity, an electric interlocal entity, or an energy services interlocal entity; or

(b) a separate legal or administrative entity created under Section 11-13-205.

(10) "Out-of-state public agency" means a public agency as defined in Subsection (13)(c), (d), or (e).

(11) (a) "Project":

(i) means an electric generation and transmission facility owned by a Utah interlocal entity or an electric interlocal entity; and

(ii) includes fuel or fuel transportation facilities and water facilities owned by that Utah interlocal entity or electric interlocal entity and required for the generation and transmission facility.

(b) "Project" includes a project entity’s ownership interest in:

(i) facilities that provide additional project capacity;

(ii) facilities that provide replacement project capacity; and

(iii) additional generating, transmission, fuel, fuel transportation, water, or other facilities added to a project.

(12) "Project entity" means a Utah interlocal entity or an electric interlocal entity that owns a project.

(13) "Public agency" means:

(a) a city, town, county, school district, local district, special service district, or other political subdivision of the state;

(b) the state or any department, division, or agency of the state;

(c) any agency of the United States;

(d) any political subdivision or agency of another state or the District of Columbia including any interlocal cooperation or joint powers agency formed under the authority of the law of the other state or the District of Columbia; and

(e) any Indian tribe, band, nation, or other organized group or community which

is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(14) "Qualified energy services interlocal entity" means an energy services interlocal entity that at the time that the energy services interlocal entity acquires its interest in facilities providing additional project capacity has at least five members that are Utah public agencies.

(15) "Replacement project capacity" means electric generating capacity or transmission capacity that:

(a) replaces all or a portion of the existing electric generating or transmission capacity of a project; and

(b) is provided by a facility that is constructed, reconstructed, converted, repowered, or installed in a location adjacent to or in proximity to or interconnected with the site of a project, regardless of whether the capacity replacing existing capacity is less than or exceeds the generating or transmission capacity of the project prior to installation of the capacity replacing existing capacity.

(16) "Utah interlocal entity":

(a) means an interlocal entity described in Subsection 11-13-203(2); and

(b) includes a separate legal or administrative entity created under Laws of Utah 1977, Chapter 47, Section 3, as amended.

(17) "Utah public agency" means a public agency under Subsection (13)(a) or (b).

Amended by Chapter 212, 2012 General Session
Amended by Chapter 345, 2012 General Session

**11-13-201. Joint exercise of power, privilege, or authority by public agencies -- Relationship to the Municipal Cable Television and Public Telecommunications Services Act.**

(1) (a) Any power, privilege, or authority exercised or capable of exercise by a Utah public agency may be exercised and enjoyed jointly with any other Utah public agency having the power, privilege, or authority, and jointly with any out-of-state public agency to the extent that the laws governing the out-of-state public agency permit such joint exercise or enjoyment.

(b) Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a public agency.

(2) This chapter may not enlarge or expand the authority of a public agency not authorized to offer and provide cable television services and public telecommunications services under Title 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act, to offer or provide cable television services and public telecommunications services.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-202. Agreements for joint or cooperative action, for providing or exchanging services, or for law enforcement services -- Effective date of**

**agreement -- Public agencies may restrict their authority or exempt each other regarding permits and fees.**

(1) Any two or more public agencies may enter into an agreement with one another under this chapter:

(a) for joint or cooperative action;

(b) to provide services that they are each authorized by statute to provide;

(c) to exchange services that they are each authorized by statute to provide;

(d) for a public agency to provide law enforcement services to one or more other public agencies, if the public agency providing law enforcement services under the interlocal agreement is authorized by law to provide those services, or to provide joint or cooperative law enforcement services between or among public agencies that are each authorized by law to provide those services; or

(e) to do anything else that they are each authorized by statute to do.

(2) An agreement under Subsection (1) does not take effect until it has been approved, as provided in Section 11-13-202.5, by each public agency that is a party to it.

(3) (a) In an agreement under Subsection (1), a public agency that is a party to the agreement may agree:

(i) to restrict its authority to issue permits to or assess fees from another public agency that is a party to the agreement; and

(ii) to exempt another public agency that is a party to the agreement from permit or fee requirements.

(b) A provision in an agreement under Subsection (1) whereby the parties agree as provided in Subsection (3)(a) is subject to all remedies provided by law and in the agreement, including injunction, mandamus, abatement, or other remedy to prevent, enjoin, abate, or enforce the provision.

(4) An interlocal agreement between a county and one or more municipalities for law enforcement service within an area that includes some or all of the unincorporated area of the county shall require the law enforcement service provided under the agreement to be provided by or under the direction of the county sheriff.

Amended by Chapter 218, 2009 General Session

**11-13-202.5. Approval of certain agreements -- Review by attorney.**

(1) Each agreement under Section 11-13-202 and each agreement under Section 11-13-212 shall be approved by:

(a) except as provided in Subsections (1)(b) and (c), the commission, board, council, or other body or officer vested with the executive power of the public agency;

(b) the legislative body of the public agency if the agreement:

(i) requires the public agency to adjust its budget for a current or future fiscal year;

(ii) includes an out-of-state public agency as a party;

(iii) provides for the public agency to acquire or construct:

(A) a facility; or

(B) an improvement to real property;

(iv) provides for the public agency to acquire or transfer title to real property;

(v) provides for the public agency to issue bonds;

(vi) creates an interlocal entity; or

(vii) provides for the public agency to share taxes or other revenues; or

(c) if the public agency is a public agency under Subsection 11-13-103(13)(b), the director or other head of the applicable state department, division, or agency.

(2) If an agreement is required under Subsection (1) to be approved by the public agency's legislative body, the resolution or ordinance approving the agreement shall:

(a) specify the effective date of the agreement; and

(b) if the agreement creates an interlocal entity:

(i) declare that it is the legislative body's intent to create an interlocal entity;

(ii) describe the public purposes for which the interlocal entity is created; and

(iii) describe the powers, duties, and functions of the interlocal entity.

(3) The officer or body required under Subsection (1) to approve an agreement shall, before the agreement may take effect, submit the agreement to the attorney authorized to represent the public agency for review as to proper form and compliance with applicable law.

Enacted by Chapter 38, 2003 General Session

**11-13-203. Interlocal entities -- Agreement to approve the creation of an interlocal entity -- Utah interlocal entity may become electric interlocal entity or energy services interlocal entity.**

(1) An interlocal entity is:

(a) separate from the public agencies that create it;

(b) a body politic and corporate; and

(c) a political subdivision of the state.

(2) Any two or more Utah public agencies may enter into an agreement to approve the creation of a Utah interlocal entity to accomplish the purpose of their joint or cooperative action, including undertaking and financing a facility or improvement to provide the service contemplated by that agreement.

(3) (a) A Utah public agency and one or more public agencies may enter into an agreement to approve the creation of an electric interlocal entity to accomplish the purpose of their joint or cooperative action if that purpose is to participate in the undertaking or financing of:

(i) facilities to provide additional project capacity;

(ii) common facilities under Title 54, Chapter 9, Electric Power Facilities Act; or

(iii) electric generation or transmission facilities.

(b) By agreement with one or more public agencies that are not parties to the agreement creating it, a Utah interlocal entity may be reorganized as an electric interlocal entity if:

(i) the public agencies that are parties to the agreement creating the Utah interlocal entity authorize, in the same manner required to amend the agreement creating the Utah interlocal entity, the Utah interlocal entity to be reorganized as an electric interlocal entity; and

(ii) the purpose of the joint or cooperative action to be accomplished by the

electric interlocal entity meets the requirements of Subsection (3)(a).

(4) (a) Two or more Utah public agencies may enter into an agreement with one another or with one or more public agencies to approve the creation of an energy services interlocal entity to accomplish the purposes of their joint and cooperative action with respect to facilities, services, and improvements necessary or desirable with respect to the acquisition, generation, transmission, management, and distribution of electric energy for the use and benefit of the public agencies that enter into the agreement.

(b) (i) A Utah interlocal entity that was created to facilitate the transmission or supply of electric power may, by resolution adopted by its governing body, elect to become an energy services interlocal entity.

(ii) Notwithstanding Subsection (4)(b)(i), a Utah interlocal entity that is also a project entity may not elect to become an energy services interlocal entity.

(iii) An election under Subsection (4)(b)(i) does not alter, limit, or affect the validity or enforceability of a previously executed contract, agreement, bond, or other obligation of the Utah interlocal entity making the election.

Amended by Chapter 350, 2009 General Session

**11-13-203.5. Powers, immunities, and privileges of law enforcement officers under an agreement for law enforcement -- Requirements for out-of-state officers.**

(1) While performing duties under an agreement for law enforcement services under Subsection 11-13-202(1)(d), whether inside or outside the law enforcement officer's own jurisdiction, each law enforcement officer shall possess:

(a) all law enforcement powers that the officer possesses within the officer's own jurisdiction, including the power to arrest; and

(b) the same immunities and privileges as if the duties were performed within the officer's own jurisdiction.

(2) Each agreement between a Utah public agency and an out-of-state public agency under Subsection 11-13-202(1)(d) providing for reciprocal law enforcement services shall require each person from the other state assigned to law enforcement duty in this state:

(a) to be certified as a peace officer in the state of the out-of-state public agency; and

(b) to apply to the Peace Officer Standards and Training Council, created in Section 53-6-106, for recognition before undertaking duties in this state under the agreement.

Enacted by Chapter 38, 2003 General Session

**11-13-204 (Superseded 05/12/15). Powers and duties of interlocal entities -- Additional powers of energy services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to lieutenant governor -- Recording requirements -- Public Service Commission.**

(1) (a) An interlocal entity:

(i) may:

(A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;

(B) sue and be sued;

(C) have an official seal and alter that seal at will;

(D) make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;

(E) acquire real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for the purposes contemplated in the agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

(F) directly or by contract with another:

(I) own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and improvements;

(II) construct, operate, maintain, and repair facilities and improvements; and

(III) provide the services contemplated in the agreement creating the interlocal entity;

(G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other obligations and secure their payment by an assignment, pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services that the interlocal entity provides;

(H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or other obligations issued by the interlocal entity; and

(I) sell or contract for the sale of the services, output, product, or other benefits provided by the interlocal entity to:

(I) public agencies inside or outside the state; and

(II) with respect to any excess services, output, product, or benefits, any person on terms that the interlocal entity considers to be in the best interest of the public agencies that are parties to the agreement creating the interlocal entity; and

(ii) may not levy, assess, or collect ad valorem property taxes.

(b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to the extent provided by the documents under which the assignment, pledge, or other conveyance is made, rank prior in right to any other obligation except taxes or payments in lieu of taxes payable to the state or its political subdivisions.

(2) An energy services interlocal entity:

(a) except with respect to any ownership interest it has in facilities providing additional project capacity, is not subject to:

(i) Part 3, Project Entity Provisions; or

(ii) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; and

(b) may:

(i) own, acquire, and, by itself or by contract with another, construct, operate, and maintain a facility or improvement for the generation, transmission, and transportation of electric energy or related fuel supplies;

(ii) enter into a contract to obtain a supply of electric power and energy and ancillary services, transmission, and transportation services, and supplies of natural gas

and fuels necessary for the operation of generation facilities;

(iii) enter into a contract with public agencies, investor-owned or cooperative utilities, and others, whether located in or out of the state, for the sale of wholesale services provided by the energy services interlocal entity; and

(iv) adopt and implement risk management policies and strategies and enter into transactions and agreements to manage the risks associated with the purchase and sale of energy, including forward purchase and sale contracts, hedging, tolling and swap agreements, and other instruments.

(3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or an amendment to that agreement may provide that the agreement may continue and the interlocal entity may remain in existence until the latest to occur of:

(a) 50 years after the date of the agreement or amendment;

(b) five years after the interlocal entity has fully paid or otherwise discharged all of its indebtedness;

(c) five years after the interlocal entity has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements; or

(d) five years after the facilities and improvements of the interlocal entity are no longer useful in providing the service, output, product, or other benefit of the facilities and improvements, as determined under the agreement governing the sale of the service, output, product, or other benefit.

(4) (a) The governing body of each party to the agreement to approve the creation of an interlocal entity, including an electric interlocal entity and an energy services interlocal entity, under Section 11-13-203 shall:

(i) within 30 days after the date of the agreement, jointly file with the lieutenant governor:

(A) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(B) if less than all of the territory of any Utah public agency that is a party to the agreement is included within the interlocal entity, a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and

(ii) upon the lieutenant governor's issuance of a certificate of creation under Section 67-1a-6.5:

(A) if the interlocal entity is located within the boundary of a single county, submit to the recorder of that county:

(I) the original:

(Aa) notice of an impending boundary action;

(Bb) certificate of creation; and

(Cc) approved final local entity plat, if an approved final local entity plat was required to be filed with the lieutenant governor under Subsection (4)(a)(i)(B); and

(II) a certified copy of the agreement approving the creation of the interlocal entity; or

(B) if the interlocal entity is located within the boundaries of more than a single county:

(I) submit to the recorder of one of those counties:

(Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and

(Bb) a certified copy of the agreement approving the creation of the interlocal entity; and

(II) submit to the recorder of each other county:

(Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and

(Bb) a certified copy of the agreement approving the creation of the interlocal entity.

(b) Upon the lieutenant governor's issuance of a certificate of creation under Section 67-1a-6.5, the interlocal entity is created.

(c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the recorder of each county in which the property is located, a newly created interlocal entity may not charge or collect a fee for service provided to property within the interlocal entity.

(5) Nothing in this section may be construed as expanding the rights of any municipality or interlocal entity to sell or provide retail service.

(6) Except as provided in Subsection (7):

(a) nothing in this section may be construed to expand or limit the rights of a municipality to sell or provide retail electric service; and

(b) an energy services interlocal entity may not provide retail electric service to customers located outside the municipal boundaries of its members.

(7) (a) An energy services interlocal entity created before July 1, 2003, that is comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1, 2010, provided retail electric service to customers outside the municipal boundaries of its members, may provide retail electric service outside the municipal boundaries of its members if:

(i) the energy services interlocal entity:

(A) enters into a written agreement with each public utility holding a certificate of public convenience and necessity issued by the Public Service Commission to provide service within an agreed upon geographic area for the energy services interlocal entity to be responsible to provide electric service in the agreed upon geographic area outside the municipal boundaries of the members of the energy services interlocal entity; and

(B) obtains a franchise agreement, with the legislative body of the county or other governmental entity for the geographic area in which the energy services interlocal entity provides service outside the municipal boundaries of its members; and

(ii) each public utility described in Subsection (7)(a)(i)(A) applies for and obtains from the Public Service Commission approval of the agreement specified in Subsection (7)(a)(i)(A).

(b) (i) The Public Service Commission shall, after a public hearing held in accordance with Title 52, Chapter 4, Open and Public Meetings Act, approve an agreement described in Subsection (7)(a)(ii) if it determines that the agreement is in the public interest in that it incorporates the customer protections described in Subsection (7)(c) and the franchise agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a neutral arbiter or ombudsman for resolving potential future complaints by customers of the energy services interlocal entity.

(ii) In approving an agreement, the Public Service Commission shall also amend the certificate of public convenience and necessity of any public utility described in

Subsection (7)(a)(i) to delete from the geographic area specified in the certificate or certificates of the public utility the geographic area that the energy services interlocal entity has agreed to serve.

(c) In providing retail electric service to customers outside of the municipal boundaries of its members, but not within the municipal boundaries of another municipality that grants a franchise agreement in accordance with Subsection (7)(a)(i)(B), an energy services interlocal entity shall comply with the following:

(i) the rates and conditions of service for customers outside the municipal boundaries of the members shall be at least as favorable as the rates and conditions of service for similarly situated customers within the municipal boundaries of the members;

(ii) the energy services interlocal entity shall operate as a single entity providing service both inside and outside of the municipal boundaries of its members;

(iii) a general rebate, refund, or other payment made to customers located within the municipal boundaries of the members shall also be provided to similarly situated customers located outside the municipal boundaries of the members;

(iv) a schedule of rates and conditions of service, or any change to the rates and conditions of service, shall be approved by the governing body of the energy services interlocal entity;

(v) before implementation of any rate increase, the governing body of the energy services interlocal entity shall first hold a public meeting to take public comment on the proposed increase, after providing at least 20 days and not more than 60 days' advance written notice to its customers on the ordinary billing and on the Utah Public Notice Website, created by Section 63F-1-701; and

(vi) the energy services interlocal entity shall file with the Public Service Commission its current schedule of rates and conditions of service.

(d) The Public Service Commission shall make the schedule of rates and conditions of service of the energy services interlocal entity available for public inspection.

(e) Nothing in this section:

(i) gives the Public Service Commission jurisdiction over the provision of retail electric service by an energy services interlocal entity within the municipal boundaries of its members; or

(ii) makes an energy services interlocal entity a public utility under Title 54, Public Utilities.

(f) Nothing in this section expands or diminishes the jurisdiction of the Public Service Commission over a municipality or an association of municipalities organized under Title 11, Chapter 13, Interlocal Cooperation Act, except as specifically authorized by this section's language.

(g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its authority to provide electric service to the extent authorized by Sections 11-13-202 and 11-13-203 and Subsections 11-13-204 (1) through (5).

(ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not provide retail electric service to customers located outside the municipal boundaries of its members, except for customers located within the geographic area

described in the agreement.

Amended by Chapter 173, 2010 General Session

**11-13-205. Agreement by public agencies to approve the creation of a new entity to own sewage and wastewater facilities -- Powers and duties of new entities -- Validation of previously created entities -- Notice to lieutenant governor -- Recording requirements.**

(1) It is declared that the policy of the state is to assure the health, safety, and welfare of its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater treatment plants and facilities on a regional basis in accordance with federal law and state and federal water quality standards and effluent standards in order to provide services to public agencies is a matter of statewide concern and is in the public interest. It is found and declared that there is a statewide need to provide for regional sewage and wastewater treatment plants and facilities, and as a matter of express legislative determination it is declared that the compelling need of the state for construction of regional sewage and wastewater treatment plants and facilities requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate, and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law to provide for the accomplishment thereof in the manner provided in this section.

(2) Any two or more public agencies of the state may also agree to approve the creation of a separate legal or administrative entity to accomplish and undertake the purpose of owning, acquiring, constructing, financing, operating, maintaining, and repairing regional sewage and wastewater treatment plants and facilities.

(3) A separate legal or administrative entity created under this section is considered to be a political subdivision and body politic and corporate of the state with power to carry out and effectuate its corporate powers, including the power:

(a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to have an official seal and power to alter that seal at will, and to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Interlocal Cooperation Act;

(b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed, operated, maintained, and repaired one or more regional sewage and wastewater treatment plants and facilities, all as shall be set forth in the agreement providing for its creation;

(c) to borrow money, incur indebtedness and issue revenue bonds, notes or other obligations payable solely from the revenues and receipts derived from all or a portion of the regional sewage and wastewater treatment plants and facilities which it owns, operates, and maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the provisions of Title 11, Chapter 14, Local Government Bonding Act;

(d) to enter into agreements with public agencies and other parties and entities

to provide sewage and wastewater treatment services on such terms and conditions as it considers to be in the best interests of its participants; and

(e) to acquire by purchase or by exercise of the power of eminent domain, any real or personal property in connection with the acquisition and construction of any sewage and wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and maintains.

(4) The provisions of Part 3, Project Entity Provisions, do not apply to a legal or administrative entity created for regional sewage and wastewater treatment purposes under this section.

(5) All proceedings previously had in connection with the creation of any legal or administrative entity pursuant to this chapter, and all proceedings previously had by any such entity for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and these entities are declared to be validly created interlocal cooperation entities under this chapter. These bonds, whether previously or subsequently issued pursuant to these proceedings, are validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect.

(6) (a) The governing body of each party to the agreement to approve the creation of an entity under this section shall:

(i) within 30 days after the date of the agreement, jointly file with the lieutenant governor:

(A) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(B) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and

(ii) upon the lieutenant governor's issuance of a certificate of creation under Section 67-1a-6.5:

(A) if the entity is located within the boundary of a single county, submit to the recorder of that county:

(I) the original:

(Aa) notice of an impending boundary action;

(Bb) certificate of creation; and

(Cc) approved final local entity plat; and

(II) a certified copy of the agreement approving the creation of the entity; or

(B) if the entity is located within the boundaries of more than a single county:

(I) submit to the recorder of one of those counties:

(Aa) the original of the documents listed in Subsections (6)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and

(Bb) a certified copy of the agreement approving the creation of the entity; and

(II) submit to the recorder of each other county:

(Aa) a certified copy of the documents listed in Subsections (6)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and

(Bb) a certified copy of the agreement approving the creation of the entity.

(b) Upon the lieutenant governor's issuance of a certificate of entity creation

under Section 67-1a-6.5, the entity is created.

(c) Until the documents listed in Subsection (6)(a)(ii) are recorded in the office of the recorder of each county in which the property is located, a newly created entity under this section may not charge or collect a fee for service provided to property within the entity.

Amended by Chapter 350, 2009 General Session

**11-13-206. Requirements for agreements for joint or cooperative action.**

(1) Each agreement under Section 11-13-202, 11-13-203, or 11-13-205 shall specify:

(a) its duration;

(b) if the agreement creates an interlocal entity:

(i) the precise organization, composition, and nature of the interlocal entity;

(ii) the powers delegated to the interlocal entity;

(iii) the manner in which the interlocal entity is to be governed; and

(iv) subject to Subsection (2), the manner in which the members of its governing body are to be appointed or selected;

(c) its purpose or purposes;

(d) the manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for it;

(e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) any other necessary and proper matters.

(2) Each agreement under Section 11-13-203 or 11-13-205 that creates an interlocal entity shall require that Utah public agencies that are parties to the agreement have the right to appoint or select members of the interlocal entity's governing body with a majority of the voting power.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-207. Additional requirements for agreement not establishing interlocal entity.**

If an agreement under Section 11-13-202 does not establish an interlocal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to the items specified in Section 11-13-206, provide for:

(1) the joint or cooperative undertaking to be administered by:

(a) an administrator; or

(b) a joint board with representation from the public agencies that are parties to the agreement; and

(2) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-208. Agreement does not relieve public agency of legal obligation or responsibility -- Exception.**

(1) Except as provided in Subsection (2), an agreement made under this chapter does not relieve a public agency of an obligation or responsibility imposed upon it by law.

(2) If an obligation or responsibility of a public agency is actually and timely performed by a joint board or by an interlocal entity created by an agreement made under this chapter, that performance may be offered in satisfaction of the obligation or responsibility.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-209. Filing of agreement.**

An agreement made under this chapter does not take effect until it is filed with the keeper of records of each of the public agencies that are parties to the agreement.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-210. Controversies involving agreements between Utah public agencies and out-of-state agencies.**

(1) In any case or controversy involving the performance or interpretation of or the liability under an agreement entered into under this chapter between or among one or more Utah public agencies and one or more out-of-state public agencies, the public agencies that are parties to the agreement shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liabilities which it may incur by reason of being joined as a party to the case or controversy.

(2) An action shall be maintainable against any public agency whose default, failure to perform, or other conduct caused or contributed to the incurring of damage or liability by the state.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-211. Public agencies authorized to provide resources to administrative joint boards or interlocal entity.**

A public agency entering into an agreement under this chapter under which an administrative joint board is established or an interlocal entity is created to operate the joint or cooperative undertaking may:

(1) appropriate funds to the administrative joint board or interlocal entity;

(2) sell, lease, give, or otherwise supply tangible and intangible property to the administrative joint board or interlocal entity; and

(3) provide personnel or services for the administrative joint board or interlocal entity as may be within its legal power to furnish.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-212. Contracts between public agencies or with interlocal entities to perform services, activities, or undertakings -- Facilities and improvements.**

(1) (a) Public agencies may contract with each other and one or more public agencies may contract with an interlocal entity created under this chapter to perform any service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform.

(b) Each contract under Subsection (1)(a) shall be authorized as provided in Section 11-13-202.5.

(c) Each contract under Subsection (1)(a) shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

(d) In order to perform a service, activity, or undertaking provided for in a contract under Subsection (1)(a), a public agency may create, construct, or otherwise acquire facilities or improvements in excess of those required to meet the needs and requirements of the parties to the contract.

(2) An interlocal entity created by agreement under this chapter may create, construct, or otherwise acquire facilities or improvements to render services or provide benefits in excess of those required to meet the needs or requirements of the public agencies that are parties to the agreement if it is determined by the public agencies to be necessary to accomplish the purposes and realize the benefits set forth in Section 11-13-102.

Amended by Chapter 38, 2003 General Session

**11-13-213. Agreements for joint ownership, operation, or acquisition of facilities or improvements.**

Any two or more public agencies may make agreements between or among themselves:

(1) for the joint ownership of any one or more facilities or improvements which they have authority by law to own individually;

(2) for the joint operation of any one or more facilities or improvements which they have authority by law to operate individually;

(3) for the joint acquisition by gift, grant, purchase, construction, condemnation or otherwise of any one or more such facilities or improvements and for the extension, repair or improvement thereof;

(4) for the exercise by an interlocal entity of its powers with respect to any one or more facilities or improvements and the extensions, repairs, or improvements of them; or

(5) any combination of the foregoing.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-214. Conveyance or acquisition of property by public agency.**

In carrying out the provisions of this chapter, any public agency may convey property to or acquire property from any other public agency for consideration as may be agreed upon.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-215. Sharing tax or other revenues.**

(1) A county, city, town, or other local political subdivision may, at the discretion of the local governing body, share its tax and other revenues with other counties, cities, towns, or local political subdivisions, the state, or a federal government agency.

(2) Each decision to share tax and other revenues shall be made as provided in Section 11-13-202.5.

Amended by Chapter 38, 2003 General Session

**11-13-216. Term of agreements.**

(1) Except as provided in Subsections (2) and 11-13-204(3), each agreement under this chapter shall extend for a term not to exceed 50 years.

(2) Subsection (1) does not apply to an agreement to which:

(a) a project entity is a party;

(b) an electric interlocal entity is a party; or

(c) an energy services interlocal entity is a party.

Amended by Chapter 8, 2014 General Session

**11-13-217. Control and operation of joint facility or improvement provided by agreement.**

Any facility or improvement jointly owned or jointly operated by any two or more public agencies or acquired or constructed pursuant to an agreement under this chapter may be operated by any one or more of the interested public agencies designated for the purpose or may be operated by a joint board or commission or an interlocal entity created for the purpose or through an agreement by an interlocal entity and a public agency receiving service or other benefits from such entity or may be controlled and operated in some other manner, all as may be provided by appropriate agreement. Payment for the cost of such operation shall be made as provided in any such agreement.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-218. Authority of public agencies or interlocal entities to issue bonds.**

(1) A public agency may, in the same manner as it may issue bonds for its individual acquisition of a facility or improvement or for constructing, improving, or extending a facility or improvement, issue bonds to:

(a) acquire an interest in a jointly owned facility or improvement, a combination of a jointly owned facility or improvement, or any other facility or improvement; or

(b) pay all or part of the cost of constructing, improving, or extending a jointly owned facility or improvement, a combination of a jointly owned facility or improvement, or any other facility or improvement.

(2) (a) An interlocal entity may issue bonds or notes under a resolution, trust

indenture, or other security instrument for the purpose of:

(i) financing its facilities or improvements; or

(ii) providing for or financing an energy efficiency upgrade or a renewable energy system in accordance with Title 11, Chapter 42, Assessment Area Act.

(b) The bonds or notes may be sold at public or private sale, mature at such times and bear interest at such rates, and have such other terms and security as the entity determines.

(c) Such bonds are not a debt of any public agency that is a party to the agreement.

(3) The governing body, as defined in Section 11-13-219, of an interlocal entity may, by resolution, delegate to one or more officers of the interlocal entity or to a committee of designated members of the governing body the authority to:

(a) in accordance with and within the parameters set forth in the resolution, approve the final interest rate, price, principal amount, maturity, redemption features, or other terms of a bond or note; and

(b) approve and execute all documents relating to the issuance of the bond or note.

(4) Bonds and notes issued under this chapter are declared to be negotiable instruments and their form and substance need not comply with the Uniform Commercial Code.

Amended by Chapter 246, 2013 General Session

**11-13-219. Publication of resolutions or agreements -- Contesting legality of resolution or agreement.**

(1) As used in this section:

(a) "Enactment" means:

(i) a resolution adopted or proceedings taken by a governing body under the authority of this chapter, and includes a resolution, indenture, or other instrument providing for the issuance of bonds; and

(ii) an agreement or other instrument that is authorized, executed, or approved by a governing body under the authority of this chapter.

(b) "Governing body" means:

(i) the legislative body of a public agency; and

(ii) the governing body of an interlocal entity created under this chapter.

(c) "Notice of bonds" means the notice authorized by Subsection (3)(d).

(d) "Notice of agreement" means the notice authorized by Subsection (3)(c).

(e) "Official newspaper" means the newspaper selected by a governing body under Subsection (4)(b) to publish its enactments.

(2) Any enactment taken or made under the authority of this chapter is not subject to referendum.

(3) (a) A governing body need not publish any enactment taken or made under the authority of this chapter.

(b) A governing body may provide for the publication of any enactment taken or made by it under the authority of this chapter according to the publication requirements established by this section.

(c) (i) If the enactment is an agreement, document, or other instrument, or a resolution or other proceeding authorizing or approving an agreement, document, or other instrument, the governing body may, instead of publishing the full text of the agreement, resolution, or other proceeding, publish a notice of agreement containing:

(A) the names of the parties to the agreement;

(B) the general subject matter of the agreement;

(C) the term of the agreement;

(D) a description of the payment obligations, if any, of the parties to the agreement; and

(E) a statement that the resolution and agreement will be available for review at the governing body's principal place of business during regular business hours for 30 days after the publication of the notice of agreement.

(ii) The governing body shall make a copy of the resolution or other proceeding and a copy of the contract available at its principal place of business during regular business hours for 30 days after the publication of the notice of agreement.

(d) If the enactment is a resolution or other proceeding authorizing the issuance of bonds, the governing body may, instead of publishing the full text of the resolution or other proceeding and the documents pertaining to the issuance of bonds, publish a notice of bonds that contains the information described in Subsection 11-14-316(2).

(4) (a) If the governing body chooses to publish an enactment, notice of bonds, or notice of agreement, the governing body shall comply with the requirements of this Subsection (4).

(b) If there is more than one newspaper of general circulation, or more than one newspaper, published within the boundaries of the governing body, the governing body may designate one of those newspapers as the official newspaper for all publications made under this section.

(c) (i) (A) The governing body shall publish the enactment, notice of bonds, or notice of agreement in:

(I) the official newspaper;

(II) the newspaper published in the municipality in which the principal office of the governmental entity is located; or

(III) if no newspaper is published in that municipality, in a newspaper having general circulation in the municipality; and

(B) as required in Section 45-1-101.

(ii) The governing body may publish the enactment, notice of bonds, or notice of agreement:

(A) (I) in a newspaper of general circulation; or

(II) in a newspaper that is published within the boundaries of any public agency that is a party to the enactment or agreement; and

(B) as required in Section 45-1-101.

(5) (a) Any person in interest may contest the legality of an enactment or any action performed or instrument issued under the authority of the enactment for 30 days after the publication of the enactment, notice of bonds, or notice of agreement.

(b) After the 30 days have passed, no one may contest the regularity, formality, or legality of the enactment or any action performed or instrument issued under the authority of the enactment for any cause whatsoever.

Amended by Chapter 388, 2009 General Session

**11-13-220. Qualifications of officers or employees performing services under agreements.**

Other provisions of law which require an officer or employee of a public agency to be an elector or resident of the public agency or to have other qualifications not generally applicable to all of the contracting agencies in order to qualify for that office or employment are not applicable to officers or employees who hold office or perform services for more than one public agency pursuant to agreements executed under this chapter.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-221. Compliance with chapter sufficient to effectuate agreements.**

When public agencies enter into agreements under this chapter whereby they utilize a power or facility jointly, or whereby one political agency provides a service or facility to another, compliance with the requirements of this chapter is sufficient to effectuate those agreements.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-222. Officers and employees performing services under agreements.**

(1) Each officer and employee performing services for two or more public agencies under an agreement under this chapter shall be considered to be:

(a) an officer or employee of the public agency employing the officer or employee's services even though the officer or employee performs those functions outside of the territorial limits of any one of the contracting public agencies; and

(b) an officer or employee of the public agencies under the provisions of Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(2) Unless otherwise provided in an agreement that creates an interlocal entity, each employee of a public agency that is a party to the agreement shall:

(a) remain an employee of that public agency, even though assigned to perform services for another public agency under the agreement; and

(b) continue to be governed by the rules, rights, entitlements, and status that apply to an employee of that public agency.

(3) All of the privileges, immunities from liability, exemptions from laws, ordinances, and rules, pensions and relief, disability, workers compensation, and other benefits that apply to an officer, agent, or employee of a public agency while performing functions within the territorial limits of the public agency apply to the same degree and extent when the officer, agent, or employee performs functions or duties under the agreement outside the territorial limits of that public agency.

Amended by Chapter 382, 2008 General Session

**11-13-223 (Superseded 05/12/15). Open and public meetings.**

(1) To the extent that an interlocal entity is subject to or elects, by formal resolution of its governing body to comply with the provisions of Title 52, Chapter 4, Open and Public Meetings Act, it may for purposes of complying with those provisions:

(a) convene and conduct any public meeting by means of a telephonic or telecommunications conference; and

(b) give public notice of its meeting pursuant to Section 52-4-202.

(2) In order to convene and conduct a public meeting by means of a telephonic or telecommunications conference, each interlocal entity shall if it is subject to or elects by formal resolution of its governing body to comply with Title 52, Chapter 4, Open and Public Meetings Act:

(a) in addition to giving public notice required by Subsection (1) provide:

(i) notice of the telephonic or telecommunications conference to the members of the governing body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the telephonic or telecommunications conference;

(b) establish written procedures governing the conduct of any meeting at which one or more members of the governing body are participating by means of a telephonic or telecommunications conference;

(c) provide for an anchor location for the public meeting at the principal office of the governing body; and

(d) provide space and facilities for the physical attendance and participation of interested persons and the public at the anchor location, including providing for interested persons and the public to hear by speaker or other equipment all discussions and deliberations of those members of the governing body participating in the meeting by means of telephonic or telecommunications conference.

(3) Compliance with the provisions of this section by a governing body constitutes full and complete compliance by the governing body with the corresponding provisions of Sections 52-4-201 and 52-4-202, to the extent that those sections are applicable to the governing body.

Amended by Chapter 249, 2007 General Session

**11-13-224. Utah interlocal entity for alternative fuel vehicles and facilities.**

(1) As used in this section, "commission" means the Public Service Commission of Utah, established in Section 54-1-1.

(2) The governing body of a Utah interlocal entity created to facilitate the conversion to alternative fuel vehicles or to facilitate the construction, operation, and maintenance of facilities for alternative fuel vehicles, or both, shall consist of:

(a) an individual from the executive branch of state government, appointed by the governor;

(b) a member of the Senate, appointed by the president of the Senate;

(c) a member of the House of Representatives, appointed by the speaker of the House of Representatives;

(d) an individual from the Utah Association of Counties, appointed by the president of the Senate;

(e) an individual from the Utah League of Cities and Towns, appointed by the speaker of the House of Representatives;

(f) an individual employed by a school district in the state, appointed by the governor;

(g) an individual appointed by the public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, with the largest budget of all public transit districts in the state;

(h) an individual employed by a gas corporation in the state, appointed by the governor; and

(i) a representative of the Utah Petroleum Marketers and Retailers Association, appointed by the governor.

(3) A Utah interlocal entity described in Subsection (2):

(a) may contribute toward the funding required for the construction, operation, and maintenance of facilities for alternative fuel vehicles that are used by or benefit the interlocal entity; and

(b) shall participate with the commission in proceedings the commission conducts under Section 54-1-13.

Enacted by Chapter 311, 2013 General Session

**11-13-301. Project entity and generation output requirements.**

(1) Each project entity:

(a) shall:

(i) except for construction of facilities to provide replacement project capacity, before undertaking the construction of a project and before undertaking the construction of facilities to provide additional project capacity, offer to sell or make available at least 50% of the generation output of or electric energy produced by the project or additional project capacity, respectively;

(ii) establish rules and procedures for an offer under Subsection (1)(a)(i) that provide at least 60 days for a prospective power purchaser to accept the offer before the offer is considered rejected; and

(iii) make each offer under Subsection (1)(a)(i):

(A) under a long-term arrangement that may be an undivided ownership interest, a participation interest, a power sales agreement, or otherwise; and

(B) to one or more power purchasers in the state that supply electric energy at wholesale or retail; and

(b) may undertake construction of facilities to provide replacement project capacity for its project.

(2) (a) The generation output or electric energy production available to power purchasers in the state from a project shall be at least 5% of the total generation output or electric energy production of the project.

(b) (i) Subject to Subsection (2)(b)(ii)(B), at least a majority of the generation capacity, generation output, or electric energy production facilities providing additional project capacity shall be:

(A) made available as needed to meet the estimated electric requirements of entities or consumers within the state; and

(B) owned, purchased, or consumed by entities or consumers within the state.

(ii) (A) As used in this Subsection (2)(b)(ii), "default provision" means a provision authorizing a nondefaulting party to succeed to or require the disposition of the rights and interests of a defaulting party.

(B) The requirements of Subsection (2)(b)(i) do not apply to the extent that those requirements are not met due to the operation of a default provision in an agreement providing for ownership or other interests in facilities providing additional project capacity.

Amended by Chapter 345, 2012 General Session

**11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy suppliers -- Method of calculating -- Collection -- Extent of tax lien.**

(1) (a) Each project entity created under this chapter that owns a project and that sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution Article XIII, Section 3, from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section to each taxing jurisdiction within which the project or any part of it is located.

(b) For purposes of this section, "annual fee" means the annual fee described in Subsection (1)(a) that is in lieu of ad valorem property tax.

(c) The requirement to pay an annual fee shall commence:

(i) with respect to each taxing jurisdiction that is a candidate receiving the benefit of impact alleviation payments under contracts or determination orders provided for in Sections 11-13-305 and 11-13-306, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the last generating unit, other than any generating unit providing additional project capacity, of the project occurs, or, in the case of any facilities providing additional project capacity, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the generating unit providing the additional project capacity occurs; and

(ii) with respect to any taxing jurisdiction other than a taxing jurisdiction described in Subsection (1)(c)(i), with the fiscal year of the taxing jurisdiction in which construction of the project commences, or, in the case of facilities providing additional project capacity, with the fiscal year of the taxing jurisdiction in which construction of those facilities commences.

(d) The requirement to pay an annual fee shall continue for the period of the useful life of the project or facilities.

(2) (a) The annual fees due a school district shall be as provided in Subsection (2)(b) because the ad valorem property tax imposed by a school district and authorized by the Legislature represents both:

(i) a levy mandated by the state for the state minimum school program under Section 53A-17a-135; and

(ii) local levies for capital outlay and other purposes under Sections 53A-16-113,

53A-17a-133, and 53A-17a-164.

(b) The annual fees due a school district shall be as follows:

(i) the project entity shall pay to the school district an annual fee for the state minimum school program at the rate imposed by the school district and authorized by the Legislature under Subsection 53A-17a-135(1); and

(ii) for all other local property tax levies authorized to be imposed by a school district, the project entity shall pay to the school district either:

(A) an annual fee; or

(B) impact alleviation payments under contracts or determination orders provided for in Sections 11-13-305 and 11-13-306.

(3) (a) An annual fee due a taxing jurisdiction for a particular year shall be calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the fee base or value determined in accordance with Subsection (4) for that year of the portion of the project located within the jurisdiction by the percentage of the project which is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers.

(b) As used in this section, "tax rate," when applied in respect to a school district, includes any assessment to be made by the school district under Subsection (2) or Section 63M-5-302.

(c) There is to be credited against the annual fee due a taxing jurisdiction for each year, an amount equal to the debt service, if any, payable in that year by the project entity on bonds, the proceeds of which were used to provide public facilities and services for impact alleviation in the taxing jurisdiction in accordance with Sections 11-13-305 and 11-13-306.

(d) The tax rate for the taxing jurisdiction for that year shall be computed so as to:

(i) take into account the fee base or value of the percentage of the project located within the taxing jurisdiction determined in accordance with Subsection (4) used to produce the capacity, service, or other benefit sold to the supplier or suppliers; and

(ii) reflect any credit to be given in that year.

(4) (a) Except as otherwise provided in this section, the annual fees required by this section shall be paid, collected, and distributed to the taxing jurisdiction as if:

(i) the annual fees were ad valorem property taxes; and

(ii) the project were assessed at the same rate and upon the same measure of value as taxable property in the state.

(b) (i) Notwithstanding Subsection (4)(a), for purposes of an annual fee required by this section, the fee base of a project may be determined in accordance with an agreement among:

(A) the project entity; and

(B) any county that:

(I) is due an annual fee from the project entity; and

(II) agrees to have the fee base of the project determined in accordance with the agreement described in this Subsection (4).

(ii) The agreement described in Subsection (4)(b)(i):

(A) shall specify each year for which the fee base determined by the agreement shall be used for purposes of an annual fee; and

(B) may not modify any provision of this chapter except the method by which the fee base of a project is determined for purposes of an annual fee.

(iii) For purposes of an annual fee imposed by a taxing jurisdiction within a county described in Subsection (4)(b)(i)(B), the fee base determined by the agreement described in Subsection (4)(b)(i) shall be used for purposes of an annual fee imposed by that taxing jurisdiction.

(iv) (A) If there is not agreement as to the fee base of a portion of a project for any year, for purposes of an annual fee, the State Tax Commission shall determine the value of that portion of the project for which there is not an agreement:

(I) for that year; and

(II) using the same measure of value as is used for taxable property in the state.

(B) The valuation required by Subsection (4)(b)(iv)(A) shall be made by the State Tax Commission in accordance with rules made by the State Tax Commission.

(c) Payments of the annual fees shall be made from:

(i) the proceeds of bonds issued for the project; and

(ii) revenues derived by the project entity from the project.

(d) (i) The contracts of the project entity with the purchasers of the capacity, service, or other benefits of the project whose tangible property is not exempted by Utah Constitution Article XIII, Section 3, from the payment of ad valorem property tax shall require each purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for, its share, determined in accordance with the terms of the contract, of these fees.

(ii) It is the responsibility of the project entity to enforce the obligations of the purchasers.

(5) (a) The responsibility of the project entity to make payment of the annual fees is limited to the extent that there is legally available to the project entity, from bond proceeds or revenues, money to make these payments, and the obligation to make payments of the annual fees is not otherwise a general obligation or liability of the project entity.

(b) No tax lien may attach upon any property or money of the project entity by virtue of any failure to pay all or any part of an annual fee.

(c) The project entity or any purchaser may contest the validity of an annual fee to the same extent as if the payment was a payment of the ad valorem property tax itself.

(d) The payments of an annual fee shall be reduced to the extent that any contest is successful.

(6) (a) The annual fee described in Subsection (1):

(i) shall be paid by a public agency that:

(A) is not a project entity; and

(B) owns an interest in a facility providing additional project capacity if the interest is otherwise exempt from taxation pursuant to Utah Constitution, Article XIII, Section 3; and

(ii) for a public agency described in Subsection (6)(a)(i), shall be calculated in accordance with Subsection (6)(b).

(b) The annual fee required under Subsection (6)(a) shall be an amount equal to the tax rate or rates of the applicable taxing jurisdiction multiplied by the product of the

following:

(i) the fee base or value of the facility providing additional project capacity located within the jurisdiction;

(ii) the percentage of the ownership interest of the public agency in the facility; and

(iii) the portion, expressed as a percentage, of the public agency's ownership interest that is attributable to the capacity, service, or other benefit from the facility that is sold by the public agency to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution, Article XIII, Section 3, from the payment of ad valorem property tax.

(c) A public agency paying the annual fee pursuant to Subsection (6)(a) shall have the obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect to its ownership interest as though it were a project entity.

Amended by Chapter 371, 2011 General Session

**11-13-303. Source of project entity's payment of sales and use tax -- Gross receipts taxes for facilities providing additional project capacity.**

(1) A project entity is not exempt from sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act, to the extent provided in Subsection 59-12-104(2).

(2) A project entity may make payments or prepayments of sales and use taxes, as provided in Title 63M, Chapter 5, Resource Development Act, from the proceeds of revenue bonds issued under Section 11-13-218 or other revenues of the project entity.

(3) (a) This Subsection (3) applies with respect to facilities providing additional project capacity.

(b) (i) The in lieu excise tax imposed under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, shall be imposed collectively on all gross receipts derived with respect to the ownership interests of all project entities and other public agencies in facilities providing additional project capacity as though all such ownership interests were held by a single project entity.

(ii) The in lieu excise tax shall be calculated as though the gross receipts derived with respect to all such ownership interests were received by a single taxpayer that has no other gross receipts.

(iii) The gross receipts attributable to such ownership interests shall consist solely of gross receipts that are expended by each project entity and other public agency holding an ownership interest in the facilities for the operation or maintenance of or ordinary repairs or replacements to the facilities.

(iv) For purposes of calculating the in lieu excise tax, the determination of whether there is a tax rate and, if so, what the tax rate is shall be governed by Section 59-8-104, except that the $10,000,000 figures in Section 59-8-104 indicating the amount of gross receipts that determine the applicable tax rate shall be replaced with $5,000,000.

(c) Each project entity and public agency owning an interest in the facilities providing additional project capacity shall be liable only for the portion of the gross receipts tax referred to in Subsection (3)(b) that is proportionate to its percentage

ownership interest in the facilities and may not be liable for any other gross receipts taxes with respect to its percentage ownership interest in the facilities.

(d) No project entity or other public agency that holds an ownership interest in the facilities may be subject to the taxes imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes, with respect to those facilities.

(4) For purposes of calculating the gross receipts tax imposed on a project entity or other public agency under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, or Subsection (3), gross receipts include only gross receipts from the first sale of capacity, services, or other benefits and do not include gross receipts from any subsequent sale, resale, or layoff of the capacity, services, or other benefits.

Amended by Chapter 189, 2014 General Session

**11-13-304. Certificate of public convenience and necessity required -- Exceptions.**

(1) Before proceeding with the construction of any electrical generating plant or transmission line, each interlocal entity and each out-of-state public agency shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future.

(2) The requirement to obtain a certificate of public convenience and necessity applies to each project initiated after the section's effective date but does not apply to:

(a) a project for which a feasibility study was initiated prior to the effective date;

(b) any facilities providing additional project capacity;

(c) any facilities providing replacement project capacity; or

(d) transmission lines required for the delivery of electricity from a project described in Subsection (2)(a) or facilities providing additional project capacity or replacement project capacity within the corridor of a transmission line, with reasonable deviation, of a project producing as of April 21, 1987.

Amended by Chapter 345, 2012 General Session

**11-13-305. Impact alleviation requirements -- Payments in lieu of ad valorem tax -- Source of impact alleviation payment.**

(1) (a) (i) A project entity may assume financial responsibility for or provide for the alleviation of the direct impacts of its project, and make loans to candidates to alleviate impacts created by the construction or operation of any facility owned by others which is utilized to furnish fuel, construction or operation materials for use in the project to the extent the impacts were attributable to the project.

(ii) Provision for the alleviation may be made by contract as provided in Subsection (2) or by the terms of a determination order as provided in Section 11-13-306.

(b) A Utah public agency that is not a project entity may take the actions set forth in this Subsection (1) as though it were a project entity with respect to its

ownership interest in facilities providing additional project capacity.

(2) A candidate may, except as otherwise provided in Section 11-13-306, require the project entity or, in the case of facilities providing additional project capacity, any other public agency that owns an interest in those facilities, to enter into a contract with the candidate requiring the project entity or other public agency to assume financial responsibility for or provide for the alleviation of any direct impacts experienced by the candidate as a result of the project or facilities providing additional project capacity, as the case may be. Each contract with respect to a project or facilities providing additional project capacity shall be for a term ending at or before the end of the fiscal year of the candidate who is party to the contract immediately before the fiscal year in which the project becomes, or, in the case of facilities providing additional project capacity, those facilities become subject to the fee set forth in Section 11-13-302, unless terminated earlier as provided in Section 11-13-310, and shall specify the direct impacts or methods to determine the direct impacts to be covered, the amounts, or methods of computing the amounts, of the alleviation payments, or the means to provide for impact alleviation, provisions assuring the timely completion of the project or facilities providing additional project capacity and the furnishing of the services, and such other pertinent matters as shall be agreed to by the project entity or other public agency and the candidate.

(3) Beginning at the time specified in Subsection 11-13-302(1), the project entity or other public agency shall make in lieu ad valorem tax payments to that candidate to the extent required by, and in the manner provided in, Section 11-13-302.

(4) Payments under any impact alleviation contract or pursuant to a determination by the board shall be made from the proceeds of bonds issued for the project or for the facilities providing additional project capacity or from any other sources of funds available with respect to the project or the facilities providing additional project capacity.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-306. Procedure in case of inability to formulate contract for impact alleviation.**

(1) If the project entity or other public agency and a candidate are unable to agree upon the terms of an impact alleviation contract or to agree that the candidate has or will experience any direct impacts, the project entity or other public agency and the candidate shall each have the right to submit the question of whether or not these direct impacts have been or will be experienced, and any other questions regarding the terms of the impact alleviation contract to the board for its determination.

(2) Within 40 days after receiving a notice of a request for determination, the board shall hold a public hearing on the questions at issue, at which hearing the parties shall have an opportunity to present evidence. Within 20 days after the conclusion of the hearing, the board shall enter an order embodying its determination and directing the parties to act in accordance with it. The order shall contain findings of facts and conclusions of law setting forth the reasons for the board's determination. To the extent that the order pertains to the terms of an impact alleviation contract, the terms of the order shall satisfy the criteria for contract terms set forth in Section 11-13-305.

(3) At any time 20 or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms or payments. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-307. Method of amending impact alleviation contract.**

An impact alleviation contract or a determination order may be amended with the consent of the parties, or otherwise in accordance with their provisions. In addition, any party may propose an amendment to a contract or order which, if not agreed to by the other parties, may be submitted by the proposing party to the board for a determination of whether or not the amendment shall be incorporated into the contract or order. The board shall determine whether or not a contract or determination order shall be amended under the procedures and standards set forth in Sections 11-13-305 and 11-13-306.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-308. Effect of failure to comply.**

The construction or operation of a project or of facilities providing additional project capacity may commence and proceed, notwithstanding the fact that all impact alleviation contracts or determination orders with respect to the project or facilities providing additional project capacity have not been entered into or made or that any appeal or review concerning the contract or determination has not been finally resolved. The failure of the project entity or other public agency to comply with the requirements of this chapter or with the terms of any alleviation contract or determination order or any amendment to them may not be grounds for enjoining the construction or operation of the project or facilities providing additional project capacity.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-309. Venue for civil action -- No trial de novo.**

(1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any order of the board, or any alleviation contract, shall be brought only in the district court for the county within which is located the candidate to which the order or contract pertains. If the candidate is the state of Utah, the action shall be brought in the district court for Salt Lake County. Any action brought in any judicial district shall be ordered transferred to the court where venue is proper under this section.

(2) In any civil action seeking to challenge, enforce, or otherwise review, any

order of the board, a trial de novo may not be held. The matter shall be considered on the record compiled before the board, and the findings of fact made by the board may not be set aside by the district court unless the board clearly abused its discretion.

Amended by Chapter 378, 2010 General Session

**11-13-310. Termination of impact alleviation contract.**

If the project or any part of it or the facilities providing additional project capacity or any part of them, or the output from the project or facilities providing additional project capacity become subject, in addition to the requirements of Section 11-13-302, to ad valorem property taxation or other payments in lieu of ad valorem property taxation, or other form of tax equivalent payments to any candidate which is a party to an impact alleviation contract with respect to the project or facilities providing additional project capacity or is receiving impact alleviation payments or means with respect to the project or facilities providing additional project capacity pursuant to a determination by the board, then the impact alleviation contract or the requirement to make impact alleviation payments or provide means therefor pursuant to the determination, as the case may be, shall, at the election of the candidate, terminate. In any event, each impact alleviation contract or determination order shall terminate upon the project, or, in the case of facilities providing additional project capacity, those facilities becoming subject to the provisions of Section 11-13-302, except that no impact alleviation contract or agreement entered by a school district shall terminate because of in lieu ad valorem property tax fees levied under Subsection 11-13-302(2)(b)(i) or because of ad valorem property taxes levied under Section 53A-17a-135 for the state minimum school program. In addition, if the construction of the project, or, in the case of facilities providing additional project capacity, of those facilities, is permanently terminated for any reason, each impact alleviation contract and determination order, and the payments and means required thereunder, shall terminate. No termination of an impact alleviation contract or determination order may terminate or reduce any liability previously incurred pursuant to the contract or determination order by the candidate beneficiary under it. If the provisions of Section 11-13-302, or its successor, are held invalid by a court of competent jurisdiction, and no ad valorem taxes or other form of tax equivalent payments are payable, the remaining provisions of this chapter shall continue in operation without regard to the commencement of commercial operation of the last generating unit of that project or of facilities providing additional project capacity.

Amended by Chapter 21, 2003 General Session

**11-13-311. Credit for impact alleviation payments against in lieu of ad valorem property taxes -- Federal or state assistance.**

(1) In consideration of the impact alleviation payments and means provided by the project entity or other public agency pursuant to the contracts and determination orders, the project entity or other public agency, as the case may be, shall be entitled to a credit against the fees paid in lieu of ad valorem property taxes as provided by Section 11-13-302, ad valorem property or other taxation by, or other payments in lieu

of ad valorem property taxation or other form of tax equivalent payments required by any candidate which is a party to an impact alleviation contract or board order.

(2) Each candidate may make application to any federal or state governmental authority for any assistance that may be available from that authority to alleviate the impacts to the candidate. To the extent that the impact was attributable to the project or to the facilities providing additional project capacity, any assistance received from that authority shall be credited to the alleviation obligation with respect to the project or the facilities providing additional project capacity, as the case may be, in proportion to the percentage of impact attributable to the project or facilities providing additional project capacity, but in no event shall the candidate realize less revenues than would have been realized without receipt of any assistance.

(3) With respect to school districts the fee in lieu of ad valorem property tax for the state minimum school program required to be paid by the project entity or other public agency under Subsection 11-13-302(2)(b)(i) shall be treated as a separate fee and does not affect any credits for alleviation payments received by the school districts under Subsection 11-13-302(2)(b)(i), or Sections 11-13-305 and 11-13-306.

Amended by Chapter 378, 2010 General Session

**11-13-312. Exemption from privilege tax.**

Title 59, Chapter 4, Privilege Tax, does not apply to a project, or any part of it, or to facilities providing additional project capacity, or any part of them, or to the possession or other beneficial use of a project or facilities providing additional project capacity as long as there is a requirement to make impact alleviation payments, fees in lieu of ad valorem property taxes, or ad valorem property taxes, with respect to the project or facilities providing additional project capacity pursuant to this chapter.

Renumbered and Amended by Chapter 286, 2002 General Session

**11-13-313. Arbitration of disputes.**

Any impact alleviation contract may provide that disputes between the parties will be submitted to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform Arbitration Act.

Amended by Chapter 3, 2008 General Session

**11-13-314. Eminent domain authority of certain commercial project entities.**

(1) (a) Subject to Subsection (2), a commercial project entity that existed as a project entity before January 1, 1980 may, with respect to a project or facilities providing additional project capacity in which the commercial project entity has an interest, acquire property within the state through eminent domain, subject to restrictions imposed by Title 78B, Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

(b) Subsection (1)(a) may not be construed to:

(i) give a project entity the authority to acquire water rights by eminent domain;

or

(ii) diminish any other authority a project entity may claim to have under the law to acquire property by eminent domain.

(2) Each project entity that intends to acquire property by eminent domain under Subsection (1)(a) shall comply with the requirements of Section 78B-6-505.

Amended by Chapter 59, 2014 General Session

**11-13-315 (Superseded 05/12/15). Taxed interlocal entity.**

(1) As used in this section:

(a) "Asset" means funds, money, an account, real or personal property, or personnel.

(b) "Public asset" means:

(i) an asset used by a public entity;

(ii) tax revenue;

(iii) state funds; or

(iv) public funds.

(c) (i) "Taxed interlocal entity" means a project entity that:

(A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3, Project Entity Provisions;

(B) does not receive a payment of funds from a federal agency or office, state agency or office, political subdivision, or other public agency or office other than a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the project entity; and

(C) does not receive, expend, or have the authority to compel payment from tax revenue.

(ii) "Taxed interlocal entity" includes an interlocal entity that:

(A) was created before 1981 for the purpose of providing power supply at wholesale to its members;

(B) does not receive a payment of funds from a federal agency or office, state agency or office, political subdivision, or other public agency or office other than a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the interlocal entity; and

(C) does not receive, expend, or have the authority to compel payment from tax revenue.

(d) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit, administer, receive, expend, appropriate, disburse, or have custody.

(ii) "Use" includes, when constituting a noun, the corresponding nominal form of each term in Subsection (1)(d)(i), individually.

(2) Notwithstanding any other provision of law, the use of an asset by a taxed interlocal entity does not constitute the use of a public asset.

(3) Notwithstanding any other provision of law, a taxed interlocal entity's use of an asset that was a public asset prior to the taxed interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public asset.

(4) Notwithstanding any other provision of law, an official of a project entity is not a public treasurer.

(5) Notwithstanding any other provision of law, a taxed interlocal entity's governing body, as described in Section 11-13-206, shall determine and direct the use of an asset by the taxed interlocal entity.

(6) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

(7) (a) A taxed interlocal entity is not a participating local entity as defined in Section 63A-3-401.

(b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall provide:

(i) the taxed interlocal entity's financial statements for and as of the end of the fiscal year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses and of cash flows for the fiscal year; and

(ii) the accompanying auditor's report and management's discussion and analysis with respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal year.

(c) The taxed interlocal entity shall provide the information described in Subsections (7)(b)(i) and (ii):

(i) in a manner described in Subsection 63A-3-405(3); and

(ii) within a reasonable time after the taxed interlocal entity's independent auditor delivers to the taxed interlocal entity's governing body the auditor's report with respect to the financial statements for and as of the end of the fiscal year.

(d) Notwithstanding Subsections (7)(b) and (c) or a taxed interlocal entity's compliance with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

(i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of Finance; and

(ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public financial information as defined in Section 63A-3-401.

(8) (a) A taxed interlocal entity's governing body is not a governing board as defined in Section 51-2a-102.

(b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Amended by Chapter 189, 2014 General Session
Amended by Chapter 196, 2014 General Session
Amended by Chapter 264, 2014 General Session